

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 2323 of 1989

For Approval and Signature:

Hon'ble MR.JUSTICE H.K.RATHOD

- =====
1. Whether Reporters of Local Papers may be allowed : NO
to see the judgements?
 2. To be referred to the Reporter or not? : NO
 3. Whether Their Lordships wish to see the fair copy : NO
of the judgement?
 4. Whether this case involves a substantial question : NO
of law as to the interpretation of the Constitution
of India, 1950 of any Order made thereunder?
 5. Whether it is to be circulated to the Civil Judge? : NO

KESHAVLAL A MANIAR

Versus

DY COLLECTOR

Appearance:

MR RR TRIVEDI for Petitioner
S.P.Dave, AGP for Respondent No. 1 to 3 and 5.
NOTICE SERVED for Respondent No. 4.

CORAM : MR.JUSTICE H.K.RATHOD

Date of decision: 16/06/2000

ORAL JUDGEMENT

Though rule has been served to respondent NO. 4,
no one has appeared on behalf of respondent No. 4. No
counter affidavit has been filed by any of the

respondents before this Court.

Facts of the present petition, in brief, are as under:

The petitioner has purchased land of survey no. 848 paiki from respondent NO. 4. The respondent No. 4, after recovering sale price, executed sale deed No. 1184 dated 7th November, 1977 in favour of the petitioner and handed over possession of the land. Said fact was brought to the notice of respondent No. 1. Thereafter, respondent No. 1 issued show cause notice to the petitioner inter alia alleging that the sale transaction was against the provisions of the Bombay Prevention of Fragmentation and Consolidation of Holdings Act, 1947 (hereinafter referred to as "the Act" for the sake of brevity) and, therefore, the same was void. In response to the said show cause notice, the petitioner had appeared before the first respondent and submitted objections. Thereafter, the respondent no. 1 has recorded the evidence and heard the matter finally and passed orders on 3rd March, 1988 wherein respondent no. 1 cancelled the sale deed executed in favour of the petitioner. Being aggrieved by the aforesaid order, the petitioner had approached the respondent no. 5 by way of revision application. Respondent No. 5 has dismissed the revision application on 31st July, 1989. That order has been challenged by the petitioner in the present petition.

This petition was admitted by this court by issuing rule thereon. Ad interim relief in terms of paragraph 12(B) of the petition was granted on 29th November, 1990 which has continued to operate.

I have heard the learned advocate Mr. Trivedi appearing for the petitioner and Mr. Dave, learned APP appearing for the respondents no. 1 to 3 and 5.

Learned advocate Mr. Trivedi has raised contention that annexure "A" notice is illegal and unauthorized and the impugned orders are against the contents of the notice. He has also submitted that the power to cancel transaction has to be exercised within reasonable period and the same cannot be exercised after the lapse of 11 years. He has also relied upon the decision of the apex court in case of State of Gujarat versus Patel Raghav Natha, reported in 10 GLR page 992. He has also relied upon the decision of this court in case of Ranchhodbhai Lalubhai Patel versus State of Gujarat reported in 25(2) GLR 1225. He has also

submitted that the respondent authority ought to have issued the statutory notice under section 6 sub clause (2) of the Act which was not at all issued to the petitioner. He has also submitted that the said notice has not been received by the petitioner. He has also submitted that the respondent No. 5 has predetermined the controversy of the matter because the respondent no. 5 delivered the judgment on 31st January, 1989 but the same was not intimated to the petitioner and instead of intimating to the petitioner, the respondent No. 5 called for full judgment from the advocate for the petitioner and intimation to this effect was sent on 8th February, 1989 after the delivery of the said judgment. He has further submitted that both the authorities have committed error in law and facts. He has submitted that both the authorities have committed material illegality of law in holding that the sale deed executed in favour of the petitioner is against the provisions of the Act of 1947. The fact about non issuance of notice under section 6 sub clause (2) has been admitted by one Ambalal Babulal, Talati cum Mantri in case No. 6 of 1987 before the authority on 1st December, 1987 in cross examination. He has also submitted that in cross examination, the talati cum mantri has admitted the fact that he was not aware about the issuance of notice under section 6 sub clause (2) of the Act. On the basis of the record which he brought at the time of deposition, he was not able to say whether the notice under section 6(2) of the Act has been served to the petitioner or not and he was not able to produce any documentary evidence in support of the fact that the notice under section 6(2) of the Act has been served to the petitioner or not. He has also submitted that the definition of the word 'fragmentation' has been misinterpreted and misunderstood by the authorities below. He has also submitted that section 6 and 7 are not applicable to the facts of the present case. Learned advocate Mr. Trivedi has relied upon the judgment of this court given in special civil application no. 1778 of 1987 in case of Ganpatram M. Sikari versus State of Gujarat delivered by Hon'ble Chief Justice Mr. DM Dharmadhikari on 3rd March, 2000. Learned advocate Mr. Trivedi has submitted that the case of the petitioner is covered by the said decision in respect of question of unreasonable delay occurred in initiating the proceedings against the petitioner by the respondent authorities.

Learned AGP Mr. Dave has submitted that the respondent authority has applied the mind and has considered the facts and circumstances of the case and has rightly passed the orders in question. Learned

advocate Mr. Trivedi has relied upon the decision of this court in case of Ranchhodbhai Lalubhai Patel (supra). Considering the facts of the referred case, it is pointed out that the sale deed was executed on 6th December, 1979 and the notice under the provisions of the Act of 1947 was issued in June, 1984. It is submitted that as the action under the Act was not taken within reasonable period, this court should allow the objection as after taking the possession of the land, the petitioner has spend substantial amount for its development and his eviction from the land would deprive him of the source of livelihood. Learned counsel appearing on behalf of the respondent has submitted that the delay in this case is not such which can be said or described as unreasonable. This Court, therefore, should not interfere as there is clear contravention of the provisions of the Act. In case of Ranchhodbhai Lalubhai Patel (supra), the learned single Judge has placed reliance on the observations of the apex court in case of Manchharam versus SP Pathak and others Civil Appeal No. 1262 (N) of 1978 decided on 28th September, 1983. The said observations are as under:

"where the power is conferred to effectuate a purpose, it has to be exercised in a reasonable manner and the reasonable exercise of power inheres its exercise within a reasonable time. This is too well established to need buttressing by a precedent. However, one is readily available in State of Gujarat v. Patel Raghav Natha and others (1970) 1 SCR 335."

Learned advocate Mr. Trivedi has submitted that no notice under section 6(2) of the Act was given to the owners of the land before declaring the transaction of sale as void. Therefore, in absence of notice under section 6(2) of the Act, the provisions of section 7 is not attracted. He has relied upon the decision of this court in case of Bherulal Vardhaji versus State of Gujarat and others reported in 1998(1) GLR 468. In the said decision, said question has been examined by the learned single Judge of this court and has decided that the findings which have been recorded by the authority are perverse and not supported by any evidence. Both the authorities have, therefore, erred in holding that the transfer of the land in question was in breach of sub section (1) of section 7 of the Act and these orders cannot be allowed to stand.

In case of Pandya Bherulal Vardhaji versus State of Gujarat and others (supra), the learned single Judge

of this court has considered that the learned counsel for respondent No. 1 has fairly conceded that on the record of the case before the authorities below as well as before this court nothing has been produced on their behalf to show that notice under section 6(2) of the Act, 1947 was given to the owner of the fragment. The learned single Judge has, therefore held that thus, in absence of any proof of notice of an entry made under sub sec.(2) of sec. 6 of the Act, 1947, there is no question of any presumption to be drawn for the correctness thereof. The learned single Judge has held as under:

"When the notice under sec.6(2) of the Act, 1947 was not given or established to be given in the present case to the owners of the land, the provisions of sub section (1) of section 7 of the Act, 1947 are not attracted and, as such, there was no prohibition on the owners of the fragment, to transfer the same to the petitioner."

Similarly, in this case also, taking into consideration the cross examination of the talati cum mantri, on 1st December, 1987, there is no proof to establish the fact that any material has to that effect has been produced before the lower authorities as well as before this court. Therefore, the contention raised by learned advocate Mr. Trivedi is covered by the decision in case of Pandya Bherulal (supra).

In the instant case, sale deed in question was executed on 17th November, 1977 and the proceedings under the Act of 1947 were initiated on 30th May, 1987. Whether the particular period of time is reasonable or not depends upon the facts of each individual case. In the instant case, it is not denied that after purchase of the land, the petitioner remained on the land and is earning his livelihood. Deprivation of the land to him after such a long period of time will take away the source of his livelihood. It may also be mentioned that the petition filed in the year 1989 has remained unanswered so far as the averments made in the petition are concerned. The petitioner has all throughout remained in possession of the land and has cultivated the land and, therefore, in view of the decision in case of Ranchhodbhai Lalubhai Patel (supra), this Court holds that the action under the Act was taken after undue and unreasonable delay of more than 11 years.

The petitioner, therefore, succeeds in the present petition considering unreasonable and undue delay by the respondent authorities for initiating the

proceedings under the Act of 1947. Since the petitioner is succeeding in the present petition on the ground of unreasonable and undue delay alone, other contentions raised in the present petition are not required to be separately dealt with.

Consequently, the petition succeeds and is allowed. The impugned orders dated 24th March, 1988 and 24/28th February, 1989 annexure "C" and "E" are hereby quashed and set aside. Rule is made absolute accordingly. In the circumstances of this case, the parties are left to bear their own costs.

16.6.2000. (H.K.Rathod,J.)

Vyas